

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY T. GUILLEN

Petitioner,

vs.

MATTHEW CATE, Secretary, California
 Department of Corrections and
 Rehabilitation,

Respondent.

CASE NO. 09cv0608 JM(CAB)

ORDER ADOPTING REPORT AND
 RECOMMENDATION RE:
 GRANTING MOTION TO DISMISS

On June 29, 2009, Magistrate Judge Cathy Ann Bencivengo entered a Report and Recommendation granting Respondent's motion to dismiss the Petition for writ of habeas corpus as time barred ("R & R"). The R & R, expressly incorporated herein, thoroughly and thoughtfully analyzed Petitioner's claims. Petitioner has filed objections to the R & R ("Objections"). Respondent did not file a reply to the Objections. Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral argument.

In his Objections, Petitioner sets forth essentially the same arguments raised in the Petition. He argues that the ten year extension to his sentence under Cal.Penal Code §667(a)(1) is not subject to the one year limitation period of 28 U.S.C. §2241(d)(1) because the California Supreme Court order denying his petition for review of sentence advised him that "because this issue is a matter outside the record on appeal, the proper remedy is by way of petition for a writ of habeas corpus." (Doc. No. 8, Exh. 2). Because Petitioner's ten year extension was an integral part of his sentence, the one year

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1 limitation period of 28 U.S.C. §2241 applies to bar Petitioner's claims.

2 In sum, the court denies the Objections and adopts the R & R in its entirety. The Clerk of
3 Court is instructed to close the file.

4 **IT IS SO ORDERED.**

5 DATED: August 28, 2009

6 
7 Hon. Jeffrey T. Miller
United States District Judge

8 cc: All parties